

No. 16195

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.
BIENVENIDO VICTORIO SISON,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern
District of California, Southern Division

FILED

JAN 29 1958

PAUL P. O'BRIEN, CLERK

No. 16195

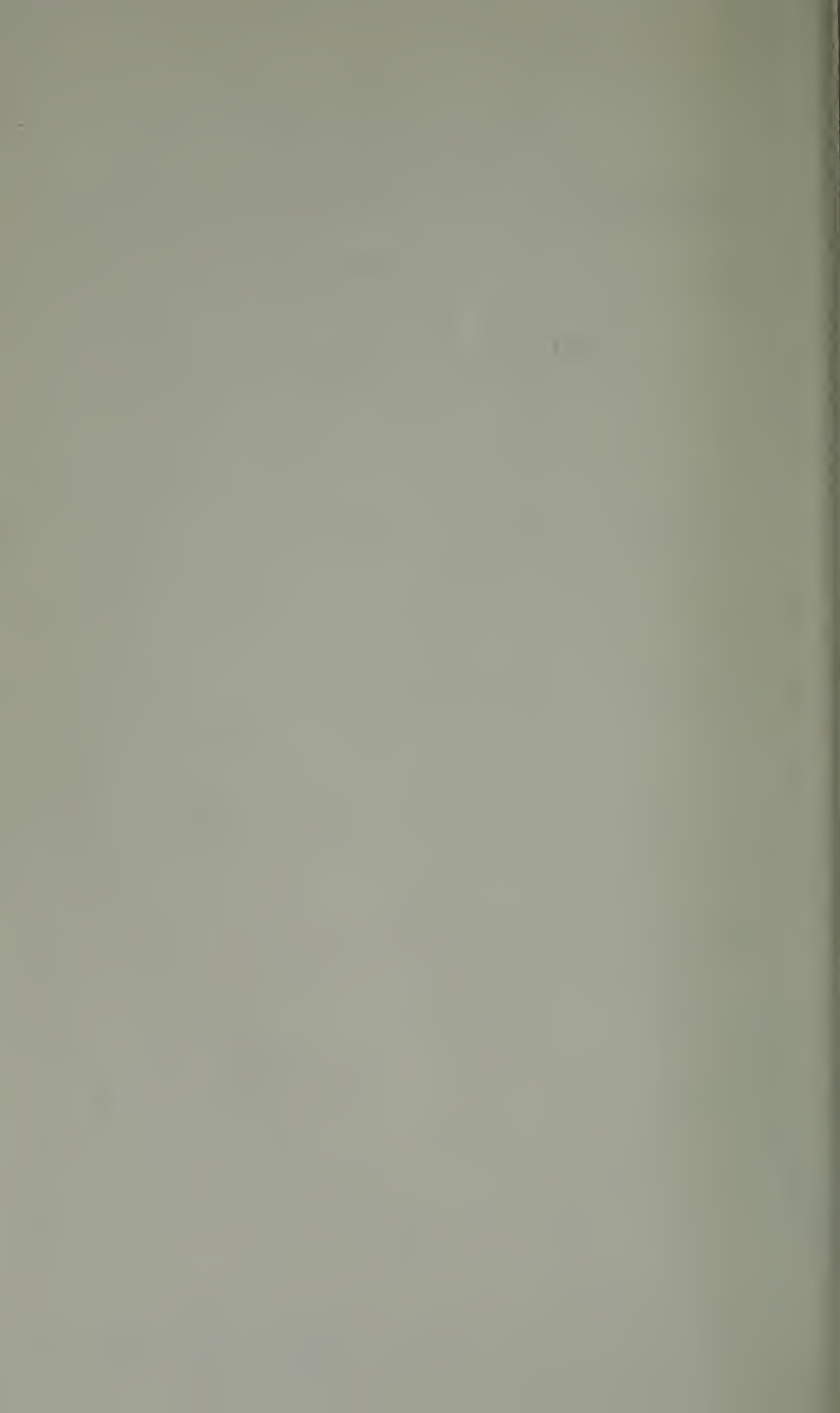
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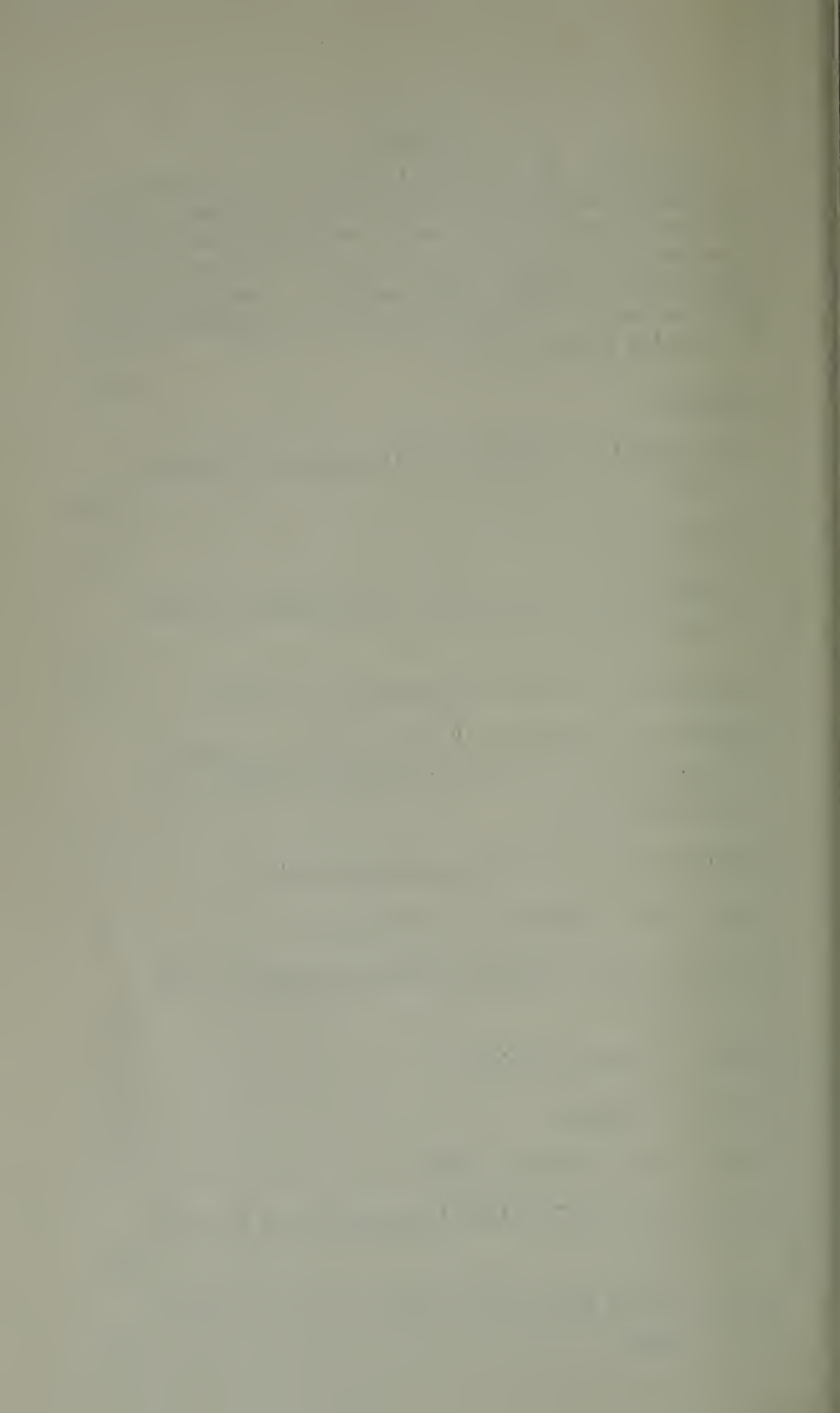
Appeal from the United States District Court for the Northern
District of California, Southern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America

No. 130662

PETITION FOR NATURALIZATION

Section 324 (a) of the Nationality Act of 1940 and
405 of the I. & N. Act

To the Honorable the District Court of the United
States of San Francisco, Calif.:

This petition for naturalization, hereby made
and filed, respectfully shows:

(1) My full, true, and correct name is Bien-
venido Victorio Sison.

(2) My present place of residence is 909 Laguna
St., #101, San Francisco, Calif.

(3) My occupation is Disabled WW II Veteran.

(4) I was born on Dec. 23, 1921, in Agoo, La
Union, P. I.

(5) My personal description is as follows: Sex
M, complexion dark, color of eyes brown, color of
hair black, height 5 feet 5 inches, weight 112
pounds, visible distinctive marks mole near rt. eye;
country of which I am a citizen, subject, or na-
tional Philippine Republic.

(6) I am married; the name of my wife is
Eduarda, we were married on July 6, 1946, at
Agoo, LaUnion, P. I.; she was born at Agoo, Lall-
mon, P. I., Oct. 13, 1928, and entered the United

States at—never for permanent residence in the United States and now resides at Agoo, P. I. * * *

(7a) (If petition is filed under section 319 (a), Immigration and Nationality Act.) I have resided in the United States in marital union with my United States citizen spouse for at least 3 years immediately preceding the date of filing this petition for naturalization, and have been physically present in the United States at least half of that time.

(7b) (If petition is filed under section 319 (b), Immigration and Nationality Act.) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or subsidiary thereof or of a public international organization in which the United States participates; and such husband or wife is regularly stationed abroad in such employment. I intend in good faith upon naturalization to live abroad with my spouse and to resume my residence within the United States immediately upon termination of such employment abroad.

8. I have four children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

Juan—M—Agoo, LaUnion, P. I.—Dec. 27, 1946
—Agoo, LaUnion, P. I.

Ernani Brigida—F—Agoo, LaUnion, P. I.—
Oct. 8, 1948—Agoo, LaUnion, P. I.

Luiz—M—Agoo, LaUnion, P. I.—June 21, 1950
—Agoo, LaUnion, P. I.

Teofilo—M—Agoo, LaUnion, P. I.—May 19, 1952
—Agoo, LaUnion, P. I.

I entered the U. S. Army at Fort Mills, Philippine Islands on July 18, 1941 under Serial No. 10305626 and was honorably discharged August 22, 1945.

Form N-440 attached hereto and made a part hereof.

(11) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which at this time I am a subject or citizen. (12) It is my intention to reside permanently in the United States. (13) I am not and have not been for a period of at least 10 years preceding the date of this petition a member of or affiliated with any organization proscribed by the Immigration and Nationality Act or any section, subsidiary, branch affiliate or subdivision thereof nor have I during such period engaged in or performed any of the acts or activities prohibited by that Act. (14) I am able to read, write

and speak the English language (unless exempted therefrom). (15) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, I am willing, if required by law, to bear arms on behalf of the United States, to perform non-combatant service in the Armed Forces of the United States, and to perform work of national importance under civilian direction (unless exempted therefrom.) * * *

(18) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses required by law.

(19) Wherefore I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to Victor Sison. I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name: So Help Me God.

/s/ BIENVENIDO VICTORIO SISON

Alien Registration No. A10 838 317.

Form N-405

Affidavit of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

(1) My name is Loreto C. Ordona, my occupation is U. S. Army. I reside at "C" Co., Presidio, San Francisco, Calif.

(2) My name is Felix G. Domondon, my occupation is Laborer. I reside at 763 Minna St., San Francisco, Calif.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with the petitioner named in the petition for naturalization of which this affidavit is a part, since at least August 1956. I have personal knowledge that the petitioner is, and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in the affidavit to this petition for naturalization subscribed by me are true to the best of my knowledge and belief; So Help Me God.

/s/ LORETO C. ORDONA
(Signature of Witness)

/s/ FELIX G. DOMONDON
(Signature of Witness)

When Oath Administered by Designated
Examiner

Subscribed and sworn to (affirmed) before me by

above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit at San Francisco, California, this 10th day of July, 1957.

/s/ F. G. BURNS,
Designated Examiner

I Hereby Certify that the foregoing petition for naturalization was by petitioner named herein filed in the office of the clerk of said court at San Francisco, California, this 10th day of July, A. D. 1957.

[Seal] C. W. CALBREATH,
Clerk

/s/ DOROTHY EDINGER,
For the Clerk

Oath of Allegiance

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by law;

that I will perform noncombatant service in the Armed Forces of the United States when required by law;

that I will perform work of national importance under civilian direction when required by the law;

and that I take this obligation freely without any mental reservation or purpose of evasion; So Help Me God. In acknowledgment whereof I have hereunto affixed my signature.

/s/ BIENVENIDO VICTORIO SISON

/s/ VICTOR SISON,

(Signature of Petitioner)

Sworn to (affirmed) in open court, this 15th day of July, A. D. 1958.

C. W. CALBREATH,

Clerk

/s/ By ETTA G. STEPHENSON,

Deputy Clerk

Petition granted: Line No. . . . of List No. 3150, and Certificate No. 7739554 issued.

Petition denied: List No. 3112—Mar. 19, 1958—cont'd 15 days for Gov't briefs; submitted for decision as of April 4, 1958. June 30, 1958—Memorandum and Order that petitioner be admitted upon taking required oath—Order filed herewith.

In the District Court of the United States in and for the Northern District of California, Southern Division, at San Francisco, California.

Petition No. 130662

Petition for Naturalization of BIENVENIDO VICTORIO SISON

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF DESIGNATED NATURALIZATION EXAMINER

To the Honorable, the Judges of the District Court of the United States in and for the Northern District of California, Southern Division:

1. The undersigned, duly designated under the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization, respectfully submits that this petitioner, a native and national of the Philippine Islands, age 36 years, filed this petition for naturalization on July 10, 1957, under Section 324 (a) of the Nationality Act of 1940 and Section 405 (a) of the Immigration and Nationality Act of 1952.

Issue: Eligibility of Petitioner Under Any Applicable Statute.

2. Statement of Facts

Petitioner was born on December 23, 1921, at Agoo, La Union Province, Republic of the Philip-

pires. He is married and has four children. Both his wife and children are in the Philippines.

He was admitted to the United States for the first and only time on July 1, 1956, as a temporary visitor for medical treatment.

He entered the Philippine Scouts at Fort Mills in the Philippines on July 18, 1941, and served honorably therein in an active-duty status from July 18, 1941, to August 22, 1945, when he was honorably discharged. He received a medical discharge based on disabilities resulting from wounds he had received. On March 13, 1957, he was given a 40% disability rating by the Veterans Administration for his condition.

He filed this petition on July 10, 1957, under Section 324 (a) of the Nationality Act and Section 405 (Savings Clause) of the Immigration and Nationality Act of 1952.

3. Discussion and Authorities

Because of the many and important facts of the case, a brief summary of our position at the outset would be in order, viz.,

(1) Petitioner does not meet the eligibility requirements under the Immigration and Nationality Act of 1952;

(2) While petitioner may have had a "status" for naturalization under Section 702 of the Nationality Act of 1940, this section expired under its own terms on December 31, 1946, and hence cut off any such "right in process of acquisition".

(3) Petitioner had no status which could have been preserved to him under Section 324 of the Nationality Act of 1940 because that section provides for judicial naturalization and the petitioner never having been out of the Philippines was not within the jurisdiction of any naturalization court. Even under *Menasche* (348 U.S. 528), therefore, he could not be said to have a right in process of acquisition because he had never in any manner entered the United States as to submit himself to the jurisdiction of a naturalization court. There is nothing saved to him, therefore, by Section 405 (a) of the 1952 Act because he was not eligible for naturalization under Section 324.

Petitioner does not meet the eligibility requirements under the Immigration and Nationality Act of 1952. The petition was not filed while he was still in the service or within six months after the termination of the service. Hence, 8 U.S.C. 1439 (a) is not applicable. Nor can he meet the residence requirements of Section 1439 (d). Section 1440 of Title 8 requires that a petitioner must have been in the United States, the Canal Zone, American Samoa, or Swain's Island, at the time of enlistment or induction whether or not he had been lawfully admitted for permanent residence or the petitioner must have been lawfully admitted for permanent residence at any time subsequent to enlistment or induction. This petitioner meets neither requirement. Nor is 8 U.S.C. 1440 (a) applicable. That statute covers service after June 24, 1950.

It remains to be determined, then, whether peti-

tioner was eligible to be naturalized under any provisions of the Nationality Act of 1940 and, if so, whether the Savings Clause of the present Act preserves any rights existing upon repeal of the Act. Two sections of the 1940 Act are apposite, sections 324, as amended, and Section 701, as amended.

Section 324 was essentially a peace time provision but apparently applied during peace or war. Section 701 applied only to those serving in World War II. It did not expressly repeal Section 324 and since it did not conflict with the latter there was no repeal by implication. Section 701 was applicable to "any person not a citizen" notwithstanding he was not within the racially eligible classes described in Section 303 of the 1940 Act.

Petitioner had the requisite three years honorable service in the Army and would have been entitled to the exceptions specified in Section 324 (b) had he filed a petition while still in the service or within six months after the termination thereof.

Petitioner could only have been naturalized if he had been in the jurisdiction of a naturalization court. Physical presence in the United States, whether pursuant to legal admission or not, was essential. (The term "United States" when used in a geographical sense in the 1940 Act meant "the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States" 8 U.S.C. 501 (4), 1946 ed.)

Naturalization under this section was judicial, and, unlike Section 702 naturalizations could only

take place in courts exercising naturalization jurisdiction. (According to our information, no courts ever exercised naturalization jurisdiction in the Philippine Islands. See also former 8 U.S.C. 701 (a) vesting naturalization jurisdiction on specified courts in the continental United States and for those possessions included in the definition of "United States" by former Section 101 (d) of the 1940 Act.)

The waiver of Section 324 (a) was not of a continuous residence but of the minimum requirements generally imposed on petitioners. This is evident from the wording of subsection (d). (Lawful entry was not a condition to naturalization under Section 324 in so far as the Ninth Circuit is concerned. *Yuen Jung v. Barber*, 184 F. 2d 491. See also *In re Fleishman*, 49 F. Supp. 223 (W.D. N.Y. 1943); contra, *Petition of Gislason*, 47 F. Supp. 46 (D. of Mass. 1942) The Service view was that the residence need not be pursuant to legal admission)

Under Section 324 (d) a petitioner had to comply with the continuous residence requirements of five years in the United States and six months in the state in which the petition was filed, immediately preceding the date of filing of the petition, except that the service was to be considered as residence within the United States or the state. Petitioner did not have the requisite residence since he did not arrive in the United States until 1956, approximately $3\frac{1}{2}$ years after the 1940 Act was repealed, even if he could have counted the period of his service as residence in the United States under the

exception in Section 324 (a), which we do not believe is permissible.

The only reasonable interpretation we can place on that exception is that only service performed within the five year period immediately preceding the date of the filing of the petition can be counted towards the requisite residence under Section 324 (d). Under Section 324 (c) even a petitioner still in the service when he petitions must prove residence, good moral character, attachment, etc., during any gap in service occurring within the five year period immediately preceding the filing of the petition. It seems incredible that Congress could have intended to exempt petitioners from such proof merely because they had completed a certain period of service before the five year period even began. We think the only reasonable interpretation is that service performed during the five year period immediately preceding the filing of the petition could be considered residence. (Under Section 328 (d) of the 1952 Act (8 U.S.C. 1429 (d) only service within five years immediately preceding the date of filing such petition shall be considered as residence and physical presence within the United States. "This provision * * * carries forward substantially the provisions of existing law in Section 324 of the Nationality Act of 1940". Senate Report 1137 (82nd Congress 2nd Session).

We do not believe petitioner gains anything even if it is assumed Section 2 of the Act of August 16, 1940, was not repealed until the effective date of the present Act (Appendix page 1) since he had

not filed his petition prior to December 24, 1952. And we think there was a repeal by implication. Section 301 (d) of the Nationality Act of 1940 (former 8 U.S.C. 701 (d)) provided that "a person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this chapter and not otherwise". Section 504 of the 1940 Act (former 8 U.S.C. 904) repealed all Acts or parts of Acts in conflict with its provisions except for the purposes of Section 746, the penal provisions. If the Act of August 16, 1940, was not inconsistent with Section 324 it most certainly conflicted with Sections 701 and 324 A of the 1940 Act.

With respect to the petitioner's eligibility for naturalization under former Section 701, it appears there was a period of time up to and including August 22, 1945 (the date of petitioner's discharge) when he could have been naturalized had there been a designated representative of the Immigration Service stationed in the area where he then was present.

Section 701 of the 1940 Act expired by its own terms on December 21, 1946. It was supplemented by Section 324 A (June 1, 1948). Under the latter a petitioner had to be (1) at the time of enlistment or induction in the United States or an outlying possession, including the Panama Canal Zone, but excluding the Philippine Islands or (2) at any time subsequent to enlistment or induction had to be lawfully admitted for permanent residence. So, this petitioner was ineligible under either alternative.

So, the Savings Clause of the present Act avails petitioner nothing in so far as Section 701 is concerned. The Savings Clause continues "The statutes or parts of statutes repealed" as to all proceedings, rights, acts, etc. Here, Section 701 was not in existence on December 24, 1952, and petitioner had no "right" or "status" or "condition" arising under Section 701 to be saved, cf. applications of Tano, etc. 139 F. Supp. 797, (N.D. Cal. 1955) affirmed per curiam, 237 F. 2d 916 (C.A. 9).

We have to this point purposely omitted any discussion as to what rights if any, petitioner acquired and were preserved by reason of his military service.

We do not question that the performance of honorable military service gave this petitioner a "status" for naturalization purposes prior to the 1952 Act. But the difficulty with the situation is this: Under what circumstances could petitioner use this service? If he had been in the jurisdiction of a naturalization court he could have used such service as residence only if it was performed within five years immediately preceding the filing of the petition. Had he filed a petition, for example on August 22, 1949, he could have used his service from July 18, 1941, to August 22, 1945, (the date of his discharge) towards residence. If he had been in the military service on August 22, 1949, however, he could have been naturalized immediately upon filing the petition under Section 324 (a). So, it is difficult to see how this military service "status" benefits petitioner under a petition filed

July 10, 1957. No period of his service was performed between July 10, 1952, and that date.

If Section 324 (a) spoke only of military service without certain conditions as to when that service was performed in relation to the date when the petition was filed, the broad sweep of the Menasche decision (348 U.S. 528) might apply. In Menasche the respondent was not eligible for naturalization under prior law, as he had not completed the requisite five years of United States residence. But he did have some residence which created a right in the process of acquisition. Here, petitioner had no residence on December 24, 1952 (effective date of the 1952 Act) and residence plus military service were prerequisite under Section 324 when the petition was not filed while petitioner was still in the service. *Pringle* (U.S. v. *Pringle* 212 F. 2d 78 (C.A. 4), of course, had completed the requirements under the old Act. *Jocson* (In re *Jocson*, 177 F. Supp.) was still in the service when he filed his petition; *Aure* (*Aure v. U.S.* 225 F. 2d 88 (C.A. 9)), also was still in the service when he filed his petition. See also In re *Ponschart's Petition*, 140 F. Supp. 485 (S.D. N.Y. 1956). See also *Petition of Strate*, 131 F. Supp. 786 (E.D. Pa.), affirmed per curiam, 223 F. (2) 470, where the petitioner was allowed to use his military service (World War I) twice. This decision is not in point, however, since there petitioner met the requirements of former Section 324 A. This petitioner could not avail himself of the section for the reason stated above.

Contra: In re De Mayo's Petition, 146 F. Supp. 759, in which the District Court, Harris J. concluded that petitioner enjoyed a certain "status" or "condition" when he completed his tour of duty in 1946 and that this was a substantive right which survived the repeal of the Nationality Act of 1940 and petitioner could utilize his service in computing the five years residence required; also see Memorandum opinion 12 In the Matter of Mike Shaltupsky Moore, J. filed April 17, 1942, (attached).

4. Pursuant to the provisions of Section 335 of the Immigration and Nationality Act of 1952, the following findings of fact and conclusions of law are made:

Findings of Fact

I.

That the petitioner is an alien and filed a petition for naturalization on July 10, 1957, under the provisions of Section 324 (a) of the Nationality Act of 1940 and Section 405 (a) of the Immigration and Nationality Act of 1952;

II.

That the petitioner entered the Philippine Scouts at Fort Mill, P. I. on July 18, 1941, and served honorably therein in an active-duty status from July 18, 1941, to August 22, 1945, when he was honorably discharged;

III.

That the petitioner was admitted to the United

States for the first and only time on July 1, 1956, as a temporary visitor for medical treatment.

Conclusions of Law

I.

That the petitioner has failed to establish eligibility for naturalization under the Immigration and Nationality Act of 1952;

II.

That the petitioner has failed to establish eligibility for naturalization under Section 324 (a) of the Nationality Act of 1940;

III.

That the petitioner has failed to establish that he acquired any rights by reason of his military service which were preserved by Section 405 of the Immigration and Nationality Act of 1952.

5. Recommendation

It is respectfully recommended that this petition be denied upon the grounds that the petitioner has failed to establish his eligibility for naturalization under any applicable statute.

Respectfully submitted,

/s/ DANIEL H. LYONS,

Designated Naturalization Examiner

Date: March 19, 1958.

Original

List No. 3112

NATURALIZATION PETITIONS RECOMMENDED TO BE DENIED

To the Honorable the District Court of the United States sitting at San Francisco, California:

C. A. Antonioli, F. J. Burns, J. S. Hemmer, H. E. Hosier, D. H. Lyons, H. Z. Smith duly designated under the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization to the above-named Court and to make findings and recommendations thereon, has personally examined under oath at a preliminary examination the following twenty-eight (28) petitioners for naturalization and their required witnesses, has found for the reasons stated below, that such petitions should not be granted, and therefore recommends that such petitions be denied.

1. Petition No. 76468; name of Petitioner Frank Carlson; reason for Denial, Withdrawn by petitioner.
2. Petition No. 89943; name of Petitioner, Jack Warnick; reason for denial, lack of prosecution.
3. Petition No. 121039; name of Petitioner, Tommy Orville Prescott; reason for denial, eligibility.
4. Petition No. 121819; name of Petitioner, George Sing; reason for denial, eligibility.

5. Petition No. 127348; name of Petitioner, Julia Ginger; reason for denial, lack of prosecution.

6. Petition No. 127913; name of Petitioner, Anna Nikoliw; reason for denial, lack of prosecution.

7. Petition No. 128113; name of Petitioner, Jose Roberto Aguilar, reason for denial, lack of prosecution.

8. Petition No. 128326; name of Petitioner, Ali Saad Zamzami; reason for denial, lack of prosecution.

9. Petition No. 128507; name of Petitioner, Anna Arsenii Kolovos; reason for denial, lack of prosecution.

10. Petition No. 128616; name of Petitioner, Giuseppe Brasillo; reason for denial, lack of prosecution.

11. Petition No. 128715; name of Petitioner, Franziska Era Nemoff; reason for denial, lack of prosecution.

12. * * * * *

13. Petition No. 129040; name of Petitioner, Jose Gonzalez; reason for denial, lack of prosecution.

14. Petition No. 129247; name of Petitioner, John Herger; reason for denial, lack of prosecution.

15. Petition No. 129434; name of Petitioner, Evangelina Foran; reason for denial, lack of prosecution.

16. Petition No. 129495; name of Petitioner,

Rito Ramirez; reason for denial, lack of prosecution.

17. Petition No. 129724; name of Petitioner, Macaria Alava Bartolome; reason for denial, lack of prosecution.

18. Petition No. 129951; name of Petitioner, Akilina Ninaud; reason for denial, lack of prosecution.

Sheet No. 2

1. Petition No. 129956; name of Petitioner, Theresa Mertley; reason for denial, lack of prosecution.

2. Petition No. 130662; name of Petitioner, Bienvenido Victorio Sison; reason for denial, eligibility.

3. Petition No. 130731; name of Petitioner, Francis Camilleri; reason for denial, lack of prosecution.

4. Petition No. 130894; name of Petitioner, Frieda Bercea; reason for denial, lack of prosecution.

5. Petition No. 130932; name of Petitioner, Maria Da Conceicao Cunha; reason for denial, lack of prosecution.

6. Petition No. 130977; name of Petitioner, Antero Merlan; reason for denial, eligibility.

7. Petition No. 131431; name of Petitioner, Matthew Daly; reason for denial, eligibility.

8. Petition No. 131715; name of Petitioner, Homero Valdespino; reason for denial; good moral character not established.

9. Petition No. 131729; name of Petitioner,

Marie Fleurance Antonia Wilson; reason for denial, withdrawn by petitioner.

10. Petition No. 131870; name of Petitioner, Leonico Ramirez Tabinga; reason for denial, eligibility.

11. Petition No. 132907; name of Petitioner, Pedro Fermin Bade; reason for denial, withdrawn by petitioner.

12. Petition No. 132875; name of Petitioner, Roger Kwek Chun; reason for denial, withdrawn by petitioner.

Respectfully submitted,

/s/ DANIEL H. LYONS,

(Signature of officer in attendance
at final hearing)

Date: March 19, 1958.

[Endorsed]: Filed March 19, 1958.

Original

Order No. 3112

ORDER OF COURT DENYING PETITIONS
FOR NATURALIZATION

United States of America,
Northern District of California—ss.

In the District Court of the United States at San
Francisco, California.

Upon consideration of the petitions for naturalization recommended to be denied, listed on List No. 3112 sheets 1 to 2 dated March 19, 1958, presented in open Court this 19 day of March, A. D.,

1958, It Is Hereby Ordered that each of the said petitions, except those petitions listed below, be, and hereby is, denied.

It Is Further Ordered that petitions listed below be continued for the reasons stated:

Petition No. 129956; name of Petitioner, Theresa Mertley; cause of continuance, off calendar.

Petition No. 121039; name of Petitioner, Tommy Orville Prescott; cause of continuance, cont. 15 days for Govt. briefs; submitted for decision as of April 4, 1958.

Petition No. 121819; name of Petitioner, George Sing; cause of continuance, cont. 15 days for Govt. briefs; submitted for decision as of April 4, 1958.

Petition No. 130662; name of Petitioner, Bienvenido Victorio Sison; cause of continuance, cont. 15 days for Govt. briefs; submitted for decision as of April 4, 1958.

Petition No. 130977; name of Petitioner, Antero Merlan; cause of continuance, cont. 15 days for Govt. brief; submitted for decision as of April 4, 1958.

Petition No. 131870; name of Petitioner, Leonico Ramirez Tabinga; cause of continuance, cont. 15 days for Govt. briefs; submitted for decision as of April 4, 1958.

By the Court, this 19 day of March, 1958.

/s/ OLIVER J. CARTER,
Judge

[Endorsed]: Filed March 19, 1958.

In the United States District Court for the Northern District of California, Southern Division

Petition No. 130662

In the Matter of the Petition for Naturalization
of BIENVENIDO VICTORIO SISON

Petition No. 130977

In the Matter of the Petition for Naturalization
of ANTERO MERLAN

Petition No. 131870

In the Matter of the Petition for Naturalization
of LEONICO RAMIREZ TABINGA

MEMORANDUM AND ORDER

The petitioners are all natives of the Philippine Islands; all have served honorably in the armed forces; all have been legally admitted to the United States; and all have combined periods of service and domestic residence in excess of five years.

The Naturalization Examiner has recommended that the petitions be denied upon the ground that the petitioners have failed to meet the residence requirements for naturalization under 8 U.S.C. 1439.

The problem is not one of first impression in this Court. A petition was granted upon facts substantially similar to those set out in the matters at bar

in re De Mayo's Petition, 146 F. Supp. 759 (D.C. N.D. Cal. 1956). As in the DeMayo case, each petitioner here has acquired a status by virtue of his service in the armed forces, *U. S. v. Menasche*, 348 U.S. 528, which status was preserved under the saving clause of the 1952 Immigration and Naturalization Act, *Aure v. U. S.*, 225 F. 2d 88, (9th Cir., 1955).

The Court sees no reason why it should not follow this prior interpretation of the Immigration and Naturalization laws by a Judge of this District Court. Accordingly, the petitioners are eligible to become naturalized citizens of the United States of America.

It Is Ordered that the petitions be, and the same hereby are granted, and the petitioners will be admitted upon taking the required oath.

Dated: June 30, 1958.

/s/ OLIVER J. CARTER,
United States District Judge

[Endorsed]: Filed June 30, 1958.

In the United States District Court for the Northern District of California, Southern Division

Petition No. 130662

In the Matter of the Petition for Naturalization
of BIENVENIDO VICTORIO SISON

NOTICE OF APPEAL

Notice is hereby given that the United States does hereby appeal to the Court of Appeals for the Ninth Circuit from the memorandum and order of this Court of June 30, 1958, granting the petition of Bienvenido Victorio Sison for naturalization and the order of this Court of July 15, 1958, admitting said Bienvenido Victorio Sison to citizenship.

Dated August 27, 1958.

ROBERT H. SCHNACKE,
United States Attorney

/s/ By CHARLES ELMER COLLETT,
Assistant U. S. Attorney

[Endorsed]: Filed August 27, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are

the full and complete originals and photostats of originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for the appellant:

Petition.

Findings of Fact, Conclusions of Law and Recommendations of the Designated Naturalization Examiner.

Order of Continuation.

Memorandum and Order of Admittance.

Notice of Appeal.

Designation of Record.

Transcript of Preliminary Hearing before the Designated Naturalization Examiner.

Transcript of Proceedings before Judge Oliver J. Carter.

Respondents' Exhibits No. 1 and 2.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 26th day of September, 1958.

[Seal]

C. W. CALBREATH,
Clerk

/s/ By ETTA G. STEPHENSON,
Deputy Clerk

In the United States District Court for the Northern District of California, Southern Division

Petition No. 130,662

Petition for Naturalization of BIENVENIDO
VICTORIO SISON

HEARING ON PETITION FOR
NATURALIZATION

March 19, 1958

Before: Hon. Oliver J. Carter, Judge.

Appearances: For the Government: Daniel H. Lyons, Designated Naturalization Examiner. For the Petitioner: Norman Stiller.

The Clerk: Bienvenido Victorio Sison, Petition for Naturalization.

Mr. Lyons: Your Honor, I think this is just probably the weakest case of all.

The Court: You mean from the applicant's point of view?

Mr. Lyons: Yes, sir, because the applicant has never been in the United States until last year, and the Government can't see that he is eligible under any provision of the law.

He served in the armed forces of the United States from 1941 to 1945 when he was honorably discharged. His first and only admission to the United States was on July 1, 1956, when he was admitted as a temporary visitor for medical treatment.

The position of the Government, in brief, is that he does not meet the eligibility requirements under the Immigration and Nationality Act of 1952. And while he may have had a status for eligibility for naturalization under Section 702 of the Nationality Act of 1940, this section expired under its own terms on July 31, 1946, and hence cut off any right in process of acquisition; and thirdly, that he had no status which could have been preserved to him under Section 324 of the 1940 Act, because that section provides for judicial naturalization, and the petitioner, never having been out of the Philippines, was never within the jurisdiction of the naturalization court.

Now, if I may file the exhibits in the case——

The Court: You may.

Mr. Lyons: Form 400, Statement of Facts for Separation of Petition of Naturalization and Application to File Petition for Naturalization.

Mr. Stiller: Excepted to.

The Court: Exhibit 1.

(Form 400 referred to was marked Government's Exhibit 1.)

Mr. Lyons: Exhibit 2 is a certification of military-naval service from the Adjutant General, showing the petitioner entered the United States armed forces at Fort Mills in the Philippines on July 18, 1941, and served in an active-duty status from July 18, 1941, to August 22, 1945. He was honorably separated from the service on August 22, 1945.

Mr. Stiller: No objection.

The Court: Exhibit 2.

(Certificate of military service was received in evidence as Government's Exhibit 2.)

Mr. Lyons: And No. 3 is the Designated Examiner's Hearing of September 16, 1956.

Mr. Stiller: No objection.

(Designated Examiner's Hearing of 9/16/56 was received in evidence as Government's Exhibit 3.)

Mr. Stiller: I have given a copy of the brief to Mr. Lyons.

The Court: Do you have any record to make in addition to that which the Government makes?

Mr. Stiller: No, I have no record. The facts are very simple in this case.

The Court: All right, then will you proceed to make your argument?

Mr. Stiller: I will cite the argument I was given a little while ago.

The reason I cited Section D of 1440 is that I think it was the intent on the part of Congress to preserve certain rights that veterans had who served and were eligible, provided they filed under Section 701 and 702.

This section expressly states that, so far as the section is concerned—I mean by its terms it continued in effect the previous law providing the party had filed a petition under it. Well, unfortunately for Sison, he didn't.

Now, the circumstances in the Philippines are this, Your Honor: As I previously stated and the

Examiner so states in his brief, there are no courts in the Philippines, or there were no courts at that time, who could naturalize a petitioner and make them American citizens. I don't feel in my mind, and I think Your Honor after studying this matter will feel, that Congress really had in mind that there had to be a naturalization court there with jurisdiction so that a person could be eligible for citizenship. I think Congress had in mind the service that was rendered by the petitioner and people in his position.

In this case we don't even have the question of the Commonwealth of the Philippines or any of that. He was actually in the regular Army of the United States. Unfortunately, there was a period when there was a representative from the Service in a certain specified place, and if you weren't there, if you were in another area, that was it. The only possibility that you could ever become a citizen was if you could get to the United States.

Now, the worst part of this is that—Your Honor possibly knows this. It hasn't too much bearing on the case, but, if the United States Consul has to issue a visa to come to the United States, either temporarily as a student or visitor or for permanent residence, if the Consul knows that you are coming to the United States for a purpose such as this and might become naturalized, he wouldn't issue a visa, in all probability. He is not supposed to issue visas for purposes other than for temporary pleasure or if a person has reached his place on the quota.

The Philippine quota is a hundred a year. It's the smallest quota that any country can have and it is over-subscribed for many years—has been, was and still continues to be.

The only way that a man like my client could get here is if he could obtain a visa in some way and get to the United States.

It so happens that Sison himself was under medical care in the Philippines but, as I understand it, there are no veterans' facilities for World War veterans in the Philippines, no hospitalization facilities.

The Court: Can he still draw a pension from the United States?

Mr. Stiller: He can still draw a pension but he can't get medical treatment from a United States hospital, and the only way that he can get medical treatment is by coming to the United States, coming under United States auspices, coming to the United States and being treated in a veterans' hospital and that's what he has been doing. He has been treated at Fort Miley out here. As the record shows, he has a 40% disability incurred during the defense of Corregidor. If anybody deserves any benefit by reason of service and by reason of what happened and by virtue of good character, etc., it is a person in his position.

The Court: Well, Mr. Stiller, that goes without saying for all these cases. These men performed services for the United States and I think the service recognizes that. They approach this matter with extreme reluctance in that respect.

Mr. Stiller: Well, I believe that, too, Your Honor. Sometimes I wish they wouldn't struggle so hard in some of these cases. That's the only thing that bothers me.

I mean, if you can go either way, I don't see why you have to go one way rather than the other, I mean, to put it frankly, and the Examiner made a great pitch about—it isn't his doing. It isn't up to him. It is up to authorities beyond him. Whatever the policy reasons are, I don't know, but it seems to me that in this type of cases they could perhaps take a different point of view, particularly in this case where we have a precedent case like the DeMayo case.

I would like to say this, the reference that the Examiner made to misquotation is correct, but, if the decision is read, the statute is cited and the judge certainly knew what the statute was and knew what he had in mind when DeMayo was admitted. These things can happen. Anybody can make a mistake, but the mistake was not in the reasoning or in the ultimate result. It was through inadvertence through some of the references.

The Court: The thought has occurred to me and I raise it now because I don't know that there is any problem of my qualification to sit in this case, but my brother-in-law was captured on Corregidor and I might have some particular feelings toward people who were in that position. He is still in the Army today, and was a part of the American Army on both Batan and Corregidor. I don't think that disqualifies me, but I mention it because

I have some rather strong attachments to him. Do any of you raise any questions

Mr. Stiller: I certainly wouldn't.

The Court: I don't feel that I do have any, but I mention it because I don't want anybody—He is a member of that outfit that was there and thinks a great deal of it and talks of it to great effect. But I have no personal experience in the matter other than simply talking to him.

Then, if no disqualification is raised, I don't think I would accept a suggestion that I be disqualified, but I mention it in case anybody wants to, so you know what the record is.

Mr. Siller: Sison had over four years in the Army, and he also had more than a year and a month's residence in the United States prior to filing this petition.

The Court: Yes, but he didn't come here until recently.

Mr. Stiller: He came here in July, 1956.

The Court: And his Army service ended—

Mr. Stiller: Ended in 1945.

The Court: So his filing in relation to his Army service is the latest of any of them here. I mean the period of time between his discharge from the Army and his filing for citizenship is the greatest distance in time—there is the greatest amount of time between those two periods in this case.

Mr. Stiller: I wouldn't know that for a fact, but it is probably so.

Mr. Lyons: Tabinga is later.

(Simultaneous colloquy between Court and counsel.)

Mr. Stiller: It is pretty much on the same basis. Either his rights are preserved or, frankly, they aren't. There is one case that says that it was, and I think there are at least two cases, one a circuit court case.

The Court: Those are cited in your brief, are they not?

Mr. Stiller: Yes. I think the Court has in mind my arguments and the cases.

The Court: Well, I certainly will review them very quickly. Now, do you have any response?

Mr. Lyons: I haven't any response, but Mr. Stiller has filed another brief here. I don't want to get trapped into writing briefs all at once. May I have a little more extended time on this one?

The Court: Well, I want to get these all at once, Mr. Lyons.

Mr. Lyons: I want you to get them all at once but the thing is, if you are going to give me the same time, I will be awfully pressed.

The Court: I would like to have these cases all stand submitted at the same time. In other words, aren't your problems substantially the same? Couldn't you file one brief in all of them, or a brief in two of them that would be the same brief?

Mr. Stiller: For Prescott you couldn't.

The Court: All right, Prescott's case is separate.

I have this in mind, while I am trying to do this,

I am going to hold the other case that I had this morning and these two cases and the next two cases all together and try to see what the pattern is, because there is a pattern here, as I see it.

I realize there are variances in these matters, but I am trying to make a determination as to a matter of law and I think I will get a better perspective of the law if I see it in the light of the whole group of cases rather than trying to pick one case and ride it through. I can see what the policy is. It gives you a better variation.

Now, some cases may fall into the category and some may not. I find that in statutory interpretation, if you get a broad look at it, you have a much better look at it than you do if you look at it in one perspective.

That doesn't mean that I am not going to consider each individual case, but I think the whole group of cases makes a broader pattern.

Mr. Lyons: They are variations of the same theme; there is no question about that, but I hope I don't have to write three different briefs.

Mr. Stiller: Your Honor, in the third page of my brief, in the first paragraph where I end with, "armed forces," I want to make sure it should state, "and more than one year's residence in the United States prior to filing his petition."

The Court: Are you talking about the Sison case?

Mr. Stiller: Yes. At the top of page 3.

The Court: Oh, yes, I see it. All right, I see it. All right, April 4th for submission. Fifteen days to file briefs.

[Endorsed]: No. 16195. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Bienvenido Victorio Sison, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed and Docketed: September 26, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16195

UNITED STATES OF AMERICA,
Appellant,
vs.

BIENVENIDO VICTORIO SISON,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF THE RECORD

The appellant makes the following statement of points on appeal:

1. That the Court erred in not sustaining the motion made by the United States of America to deny the Petition for Naturalization because the

petitioner failed to establish eligibility under the Immigration and Nationality Act of 1952.

2. That the Court erred in ruling that the petitioner acquired a "status" under the Nationality Act of 1940 which was preserved under Section 405 of the Immigration and Nationality Act of 1952.

3. That the Court erred in granting the Petition for Naturalization in that the petitioner failed to establish eligibility under any applicable naturalization statute.

The entire record with the exception of the exhibits, the copy of the Memorandum Opinion and appendix attached to the Examiner's Findings, is designated to be printed.

Dated: October 14, 1958.

ROBERT H. SCHNACKE,
United States Attorney

/s/ By CHARLES ELMER COLLETT,
Assistant United States Attorney,
Attorneys for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 14, 1958. Paul P. O'Brien, Clerk.